Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of

Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

CS Docket No. 95-178

FURTHER REPLY COMMENTS OF THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

The following reply comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Report and Order and Notice of Proposed Rule Making* in the above-captioned proceeding.[1] ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks.[2] ALTV's member stations will be affected directly by the Commission's action in this proceeding.

[1]FCC 96-197 (released May 24, 1996)[hereinafter cited as *Notice*].

[2]Local stations among ALTV's members include not only traditional independent stations, but also local television stations affiliated with the three emerging networks, Fox, UPN, and WB.

The Commission is concerned that "a number of parties commenting in this proceeding simply endorse a change to DMA definitions in their particular situations without taking account of their potential for such changes being subject to review and reversal under Section 614(h)."[3] Initially, ALTV must disclaim any interest in a particular situation. ALTV favored a shift to DMAs as the only feasible -- and rational -- means of maintaining the approach wisely adopted by the Commission in 1993. The alternative was carving into stone the 1991-92 Arbitron ADIs as the basis for determining the local market areas of local television stations. As the Commission stated, however, in electing to shift to DMAs in 1999:

> [W]e do not find sufficient grounds to conclude that potential burdens and disruptions would outweigh the benefits of using a more current market list, particularly when over time, the 1991-92 market list will become an even less accurate measure of television markets.[4]

Now the Commission seeks only to "facilitate a more orderly transition process to a revised definition of local market for must carry/retransmission consent elections."[5]

I. Adoption of Additional Rules Is Unnecessary at This Time.

ALTV respectfully submits that the Commission need only maintain the process Congress contemplated without frills. Whereas some abstract or theoretical basis may exist for adopting special transition processes, the appropriate level of concern as a practical matter appears very slight. No showing has been made and the record hardly would support the conclusion that widespread disruption of established carriage patterns will impose inordinate or undue burdens on any party.

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[3]*Notice* at ¶51.

[4]*Notice* at ¶40.

[5]*Notice* at ¶49.

No basis exists for any fear that a new wave of §614(h) proceedings might follow the shift to DMA-defined markets.[6] The Commission itself, for example, is concerned about "situations where Nielsen has combined previously separate markets or stations on the fringes of markets have significantly revised market areas."[7] The example cited by the Commission is the combination of the Hagerstown and Washington, D.C. markets.[8]

ALTV asserts that the Commission's fears are based on speculation. To the contrary, substantial reasons exist to doubt that these situations will prompt a meaningful number of §614(h) requests. First, only a handful of such situations exist. Other than Washington-Hagerstown, ALTV is aware of only the combinations of Sarasota and Tampa, Florida, and Flagstaff and Phoenix, Arizona. Second, the operation of other elements of the Commission's rules is likely to diminish materially the effect of the combinations. Whereas the Commission is concerned that increased carriage of Washington stations in Hagerstown might prompt a §614 request, the marginal effect of the change is likely to be very insignificant. The Hagerstown system already carries five Washington stations (WJLA, WUSA, WRC, WTTG, and WDCA).[9] Carriage of Washington stations also would be reduced by the effects of §614(h)(1)(B)(iii), requiring stations to provide an adequate signal, and §614(b)(5), eliminating carriage of duplicating signals. This suggests that even in the few cases where concerns might exist, the impact of the shift would be ameliorated in large part by other provisions of the rules.

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[6]*Notice* at 51.

[7]*Id.*

[8]*Id.*

[9]*Television & Cable Factbook* (1996) at D-757.

The comments submitted to the Commission also provide no real basis for adoption of any special transition rules. Empirical evidence of widespread transition burdens is lacking. Even the examples provided by the Small Business Cable Association ("SBCA") are far from compelling.[10] They tell only half the story, ignoring that systems which will have to add *X* number of new local signals already carry some of those signals, that they may drop signals which no longer are local, and that other provisions of the Commission's rules may ameliorate new carriage obligations. For example, the Moorfield, West Virginia, cable system in Hardy County, West Virginia, already carries three Washington, D.C. stations.[11] Similarly, the Heflin, Alabama, cable system in Cleburne County, Alabama, already carries four Atlanta stations.[12] The Spencer, Nebraska, cable system in Boyd County, Nebraska, already carries one Lincoln station -- and also carries network affiliates from Chicago and New York.[13] Therefore, the sort of superficial analysis proffered by the SBCA has no probative value whatsoever.[14]

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[10]Comments of the Small Cable Business Association, Cs Docket No. 95-178 (filed October 30, 1996) at 3-6.

[11]*Television & Cable Factbook* (1996) at D-1881.

[12]*Id.* at D-32.

[13]*Id.* at 1077.

[14]ALTV also finds itself chagrined that the same cable industry which shifted broadcast channel positions with no regard whatsoever for the inconvenience and economic on local stations now urges the Commission to protect it from channel realignment costs. *See, e.g.,* Comments of the SBCA, *supra,* at 13. Any such indemnification proposal runs squarely into the statutory prohibition on requiring stations to pay for carriage. 47 U.S.C. 534(b)(10).

Calls for more time to adjust also have no merit.[15] The Commission already has delayed the switch to DMAs for three years! The actual effect of the transition will be known several years in advance. More than ample time exists for all affected parties to anticipate, plan, and effectuate any changes occasioned by the switch to DMAs.

In view of the above, adoption of new procedures to implement §614(h) is unnecessary.

II. The Commission's Proposed Exhibit List Is Too Confining and Too Demanding.

The Commission has proposed to standardize the §614(h) process.[16] This proposal has drawn no appreciable support. ALTV, too, considers this proposal premature at best. Furthermore, such standardization potentially is burdensome -- a factor of some significance given the Commission's concern about smaller stations and cable systems.[17] Requiring stations or cable systems to submit a laundry list of exhibits --which may or may not be essential to a showing that a market should be modified -- is inefficient and would serve only to discourage filing of §614(h) requests. Furthermore, such an approach may conflict with the statute, which already specifies a more limited range of evidentiary showings as justification for a market modification.[18] On the other hand, petitioners might consider other evidence persuasive and hardly should be discouraged from submitting it. Lastly, parties seeking market modifications already have a body of case law from the Commission which provides ample insight into the types of evidence the Commission has

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[15] *See, e.g.,* Comments of SBCA, *supra,* at 12; Comments of the National Cable Television Association, CS Docket No. 95-178 (filed October 31, 1996) at 2-3.

[16] *Notice* at ¶52.

[17] *Notice* at ¶50.

[18] 47 U.S.C. §614(h)(1)(C)(ii).

found persuasive. Therefore, a formal delineation of requisite evidentiary exhibits is both confining and demanding -- and unnecessary.

III. Conclusion

In view of the above, ALTV urges the Commission not to revise the §614(h) process. Congress has created a sound mechanism for adjusting the geographic scope of particular television markets. No reason exists to alter that mechanism.

Respectfully submitted,

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